

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**R.M.S. TITANIC, INC.,  
successor-in-interest to  
Titanic Ventures, limited partnership,  
Plaintiff,**

**v.**

**Civil Action No. 2:93cv902**

**THE WRECKED AND ABANDONED VESSEL,  
ITS ENGINES, TACKLE, APPAREL,  
APPURTENANCES, CARGO, ETC., LOCATED  
WITHIN ONE (1) NAUTICAL MILE OF A POINT  
LOCATED AT 41 43/ 32' NORTH LATITUDE  
AND 49 56' 49" WEST LONGITUDE,  
BELIEVED TO BE THE R.M.S. TITANIC  
in rem,  
Defendant.**

**STATUS REPORT**

The United States, as *amicus*, and on behalf of its National Oceanic and Atmospheric Administration ("NOAA"), provides the following status update.

Pursuant to the Section 113 process,<sup>1</sup> NOAA has been notified of two potential expeditions to the *Titanic* wreck site.

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<sup>1</sup> Section 113 of the Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 (May 5, 2017), provides that "no person shall conduct any research, exploration, salvage, or other activity that would physically alter or disturb the wreck or wreck site of the RMS Titanic unless authorized by the Secretary of Commerce per the provisions of the Agreement Concerning the Shipwrecked Vessel RMS Titanic [i.e., the International Agreement]." Department of Commerce Appropriations Act, 2017, Pub. L. 115-31, 131 Stat 135, 192 (2017). The decision to issue a Section 113 authorization (or determine that no authorization is required) presently is vested in the Secretary of Commerce, with input from NOAA. Some of the information and materials provided to or developed by NOAA and Commerce when considering expeditions potentially subject to a Section 113 authorization may be pre-decisional, deliberative, proprietary, and/or confidential, and, therefore, not subject to public disclosure. *City of Virginia Beach, Va. v. U.S. Dep't of Commerce*, 995 F.2d 1247, 1253 (4th Cir. 1993) (FOIA Exemption 5 protects from disclosure materials that are predecisional (i.e., "documents [that] are 'prepared in order to assist an agency decisionmaker in arriving at his decision'" ) and deliberative (i.e., documents which

1. *Woods Hole Oceanographic Institute et al.*

In early May, 2018, David Alberg (Superintendent – NOAA Monitor National Marine Sanctuary) was contacted by the Woods Hole Oceanographic Institute, in partnership with the Advanced Imaging and Visualization Laboratory (AIVL), and Marine Imaging Technologies (collectively, WHOI), and advised that WHOI anticipated expeditions to the *Titanic* in summer 2018 and 2019. In early July 2018, WHOI provided information pursuant to Section 113, which NOAA is presently reviewing. In general, the project objectives for the expedition include non-intrusive scientific survey work, optical and acoustic mapping, environmental and biological surveys, archeological survey work, and interior exploration and surveys using ROVs inside the hull. Mr. Alberg has advised WHOI of this Court’s constructive *in rem* jurisdiction and of RMST’s salvor-in-possession status, and has also encouraged WHOI to notify both this Court and RMST to ensure its plans are not deemed to be contrary to either the Court’s jurisdiction, or RMST’s salvor status.

2. *EYOS Expeditions.*

In late May 2018, Mr. Alberg was contacted by EYOS Expeditions, and advised that EYOS anticipated an expedition to the *Titanic* in mid- to late-September 2018. In early June 2018, EYOS provided information pursuant to Section 113. NOAA is presently reviewing that information and also requested additional information. In general, the project objective for the

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“reveal[] the manner in which the agency evaluates possible alternative policies or outcomes”); *Jurewicz v. U.S. Dep’t of Agric.*, 741 F.3d 1326, 1331 (D.C. Cir. 2014) (FOIA Exemption 4 protects from disclosure materials received from third parties which contain trade secrets, commercial or financial information or privileged and confidential information. Confidential means that “disclosure would be likely either (1) to impair the Government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.”) (internal quotation marks omitted)

expedition is to conduct two private dives using a human-occupied vehicle, with no intent of interfering with the shipwreck or wreck site, and to collect standard definition imagery.

Mr. Alberg has advised EYOS of this Court's constructive *in rem* jurisdiction and of RMST's salvor-in-possession status, and has also encouraged EYOS to notify both this Court and RMST to ensure its plans are not deemed to be contrary to either the Court's jurisdiction, or RMST's salvor status.

Respectfully submitted,

G. Zachary Terwilliger  
United States Attorney

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of July, 2018, I will electronically file the foregoing document with the Clerk of Court using the CM/ECF system, which will then send a notification of electronic filing (NEF) to the following:

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